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7 UNITED STATES BANKRUPTCY COURT
 8 DISTRICT OF NEVADA

9 In Re:) Case No. BK-23-10423-MKN
 10 CASH CLOUD, INC.,) Chapter 11
 11 dba COIN CLOUD,)
 12 Debtor.) REPLY IN SUPPORT OF MOTION FOR
) APPROVAL OF ADMINISTRATIVE
) CLAIM
 13) Hearing date: July 20, 2023
 14) Hearing time: 10:30 a.m.

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 16 Trangistics, Inc. (“**Trangistics**”), by and through undersigned counsel, hereby replies in
 17 support of its Motion, at ECF 652, for Approval of Administrative Claim no. 105 (“**POC 105**”),
 18 an in opposition to the Response filed by debtor Cash Cloud, Inc., dba Coin Cloud or Cash Coin
 19 (“**Cash Cloud**” or “**Debtor**”), ECF 831 (“**Response**”).

20 INTRODUCTION

21 Debtor opposes POC 105 but concedes that it agreed to store its digital ATM machines,
 22 referred to as “**Kiosks**,” with Trangistics and does not dispute that the cost of the post-petition
 23 storage of the Kiosks in warehouse space controlled by Trangistics is an actual or necessary cost
 24 or expense of preserving estate assets. Instead, Debtor now quibbles over the amount of rent it
 25 agreed to pay to store its Kiosks.

26 Debtor objects to the rental rate despite having agreed by its conduct to pay \$36,800 per
 27 month to store the Kiosks and having tried, but failed, to move its Kiosks to less expensive space
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1 elsewhere in the tight Las Vegas warehouse market. The Court should note that the relief Debtor
 2 seeks – to “deny” the administrative claim – is not contemplated under the statute or the case law
 3 quoted in Debtor’s Response.

4 Because Debtor has failed to rebut the presumption that the agreed-upon monthly
 5 warehouse space rental rate of \$36,800 was the fair and reasonable rate under the circumstances
 6 of this case, the Court should disregard Debtor’s Response and allow the claim.

7 FURTHER FACTUAL BACKGROUND

8 Trangistics initially agreed to provide shipping services to Debtor Cash Cloud, and toward
 9 that end Jeffrey Gordon, “CFO/COO” of the Debtor, signed a Trangistics “Credit Information
 10 Sheet” on behalf of Cash Cloud, with London Molina, who was head of logistics at Cash Cloud,
 11 as the primary contact. POC 105, at 2; Declaration of David McGrew (“**McGrew Dec.**”) ¶ 3. In or
 12 about February 2022 Molina came to McGrew, who is vice-president of Trangistics, with a need
 13 to ship and temporarily store more than 1,300 Kiosks. POC 105, at 7; McGrew Dec. ¶¶ 2, 4, 5.
 14 Cash Cloud was enmeshed in a dispute with the maker of the Kiosks, Cole Kepro, which was
 15 storing the Kiosks, and it needed to quickly move the machines out of Cole Kepro’s storage
 16 facility.

17 After some negotiations, Cash Cloud and Trangistics reached an agreement for Trangistics
 18 to ship to and temporarily store approximately 914 Kiosks for Cash Cloud at a Warehouse in
 19 Sloan, Nevada controlled by Trangistics (“**Warehouse**”). POC 105, at 7; McGrew Dec. ¶ 6. The
 20 parties agreed to shipping and two months of storage, for \$95,850, with an additional two months
 21 of storage. POC 105, at 5-6; McGrew Dec. ¶ 7. The Warehouse benefits from 24/7 security and
 22 air-conditioning and, as such, preserves the Kiosks, which contain sensitive electronics. McGrew
 23 Dec. ¶ 8. In short, once Molina agreed to store the Kiosks with Trangistics, a bailment was formed
 24 under a storage agreement. *See* UCC § 7-209, at Nev. Rev. Stat. § 104.7209.

25 The conduct of the parties shows that Trangistics billed Cash Cloud \$36,800 per month for
 26 storage, as acknowledged by Cash Cloud. Declaration of Jim Hall in support of Response (“**Hall**
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1 **Dec.**) ¶ 10. Specifically, Trangistics began sending invoices to Cash Cloud (dba “Cash Coin”)
 2 beginning in March 2022 in the amount of \$36,800 for storage of the Kiosks. Declaration of Anne
 3 Rudinsky (“**Rudinsky Dec.**”) ¶¶ 3-5 and Exhibit A thereto, at 1-10, 14, 22, 27, 40, 65, 66.

4 Although its counsel for litigation purposes has complained Trangistics allegedly charged
 5 excessive rent on the Warehouse space, **no evidence** has been presented showing that Cash Cloud
 6 ever objected to paying \$36,800 per month to store its Kiosks. Hall Dec. ¶ 12; Response, at 4-5. It
 7 simply failed to make certain of the rent payment.

8 On or about December 8, 2022, Molina contacted McGrew, stating that he “need[ed]” to
 9 move “approximately 900” Kiosks to “to an undermined new location in [Las V]egas,” and the
 10 parties negotiated some proposed details, but nothing came to pass. POC 105, at 8-10; McGrew
 11 Dec. ¶¶ 9-10. Cash Cloud admits that it **still** is storing its Kiosks with Trangistics at the
 12 Warehouse. Hall Dec. ¶ 9; Response, at 2:23.

13 Meanwhile, Cash Cloud made one monthly space rent payment in the amount of \$38,600
 14 in or about April 2023, or post-petition. Hall Dec. ¶¶ 9, 12 & Exhibit 1 thereto, at 1; Rudinsky
 15 Dec. ¶ 7. Again, Cash Cloud did not object to the rental rate or in any way dispute the invoice for
 16 said sum.

17 The within claim is in the amount of \$154,400 for the period of February 7, 2023 (the
 18 petition date) through May 6, 2023, i.e. three months of rent at \$36,800 per month, and is a
 19 continuing expense. POS 105, at 1 ¶¶ 1, 3. As of July 6, 2023, five months had passed since the
 20 petition date, but Cash Cloud has made one post-petition payment in the amount of \$38,600,
 21 which can be applied to the claim, leaving the rent for **four months** still to be paid. The total
 22 remaining to be paid on this claim, $\$38,600 \times 4$, is **\$154,400**.¹ Rudinsky Dec. ¶ 6 and Exhibit B
 23 thereto. Trangistics respectfully requests that the Court allow this administrative claim and order
 24 Cash Cloud pay said sum to Trangistics forthwith.

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 27 ¹ POC 105 contains a mathematical error that until now neither party seems to have noted. *See*
 28 POC 105, at 1 ¶ 1 (miscalculating \$38,600 per months for the three-month period beginning
 February 7, 2023 and ending May 6, 2023).

ARGUMENT

I. Cash Cloud does not dispute that the amount claimed was actual and necessary to preserve the estate.

“Section 503 of the Bankruptcy Code provides that, ‘[a]fter notice and a hearing, there shall be allowed administrative expenses, . . . including—(1)(A) the actual, necessary costs and expenses of preserving the estate’” *In re Phila. Newspapers*, 690 F.3d 161, 172 (3d Cir. 2012) (citing 11 U.S.C. § 503(b)). “In general, an administrative expense may be allowed under § 503(b)(1)(A) when the claimant shows the debt was actual and necessary to preserve the estate.” *In re Gilman*, 646 B.R. 277, 288 (Bankr. C.D. Cal. 2022). “The terms ‘actual’ and ‘necessary’ must be narrowly construed to preserve the estate.” *Id.*

Ninth Circuit courts “require a claimant to show that the debt: (1) arose from a transaction with the debtor-in-possession and (2) directly and substantially benefitted the estate.” *In re BCE W., LP*, 319 F.3d 1166, 1172 (9th Cir. 2002); *see In re DAK Indus.*, 66 F.3d 1091, 1094 (9th Cir. 1995) (citation omitted) (“The burden of proving an administrative expense claim is on the claimant”). “[T]he principal test of substantial contribution is ‘the extent of benefit to the estate.’” *In re Cellular 101, Inc.* 377 F.3d 1092, 1996 (9th Cir. 2004). “Substantial contribution ‘requires contribution which provides *tangible benefits* to the bankruptcy estate and the other unsecured creditors.’” *In re Gilman*, 646 B.R. at 288.

Here, the Debtor does not object or dispute that storing the Kiosks in the guarded, air-conditioned Warehouse was necessary to protect the Kiosks, which are estate assets that contain sensitive electronics. Thus, their storage in the Warehouse provided tangible benefits to the estate. Nor can the Debtor show that the expenses were not actual expenses pursuant to agreement between the parties. As further explained below, via the conduct of the parties, an agreement existed – which Debtor does not dispute – for the Kiosks to be stored in the Warehouse.

1 **II. The parties had an enforceable agreement to store the Kiosks.**

2 **A. Debtor does not dispute that it agreed to pay \$36,800 per month for**
 3 **guarded, climate-controlled storage that preserved estate assets.**

4 A contract is “an agreement which creates an obligation.” *In re Estate of Kern*, 107 Nev.
 5 988, 993-94, 823 P.2d 275, 278 (1991). “Basic contract principles require, for an enforceable
 6 contract, an offer and acceptance, meeting of the minds, and consideration.” *May v. Anderson*, 121
 7 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

8 A meeting of the minds exists when the parties have agreed on the contract’s essential
 9 terms, and which terms are essential “depends on the agreement and its context and also on the
 10 **subsequent conduct of the parties**, including the dispute which arises and the remedy
 11 sought.” Restatement (Second) of Contracts § 131 cmt. g (1981) (*quoted in Certified Fire Prot.,*
 12 *Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012)) (emphasis added);
 13 *see also Jsibd Corp. v. Tropicana Invs.*, 507 P.3d 183, *2 (2022) (citing a party’s “subsequent
 14 conduct” in determining whether a contract was formed).

15 Here, as noted, on June 21, 2021 Jeffrey Gordon, “CFO/COO” of the Debtor, signed a
 16 Trangistics “Credit Information Sheet” on behalf of Cash Cloud, with London Molina, who was
 17 head of logistics at Cash Cloud, as the primary contact. POC 105, at 2. In February 2022 Molina
 18 communicated with McGrew regarding shipping and storage of “914 machines.” POC 105, at 5-6.
 19 Mr. Molina needed those 914 machines to go into temporary storage “immediately,” due to the
 20 need to get the Kiosks away from Cole Kepro. POC 105, at 7; McGrew Dec. ¶ 6. Also as noted,
 21 Trangistics sent numerous invoices to Cash Cloud in 2022 and has continued to do so, yet not
 22 once did Molina act to pull the Kiosks out of the Warehouse to place them in allegedly less
 23 expensive space or even complain to Trangistics that the storage rent was too high (other than for
 24 purposes of litigation). Exhibit A to Rudinsky Dec., at 1-10, 14, 22, 27, 40, 65, 66.
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1 In short, the parties' conduct shows that Cash Cloud contracted with Trangistics to store
 2 the Kiosks in the warehouse space controlled by the latter, and it did not object to the rental rate or
 3 take any affirmative act to remove the Kiosks so as to place them in other, allegedly less-costly
 4 warehouse space. The parties' conduct shows that agreed-upon and reasonable rental rate on the
 5 Warehouse space used to store the Kiosks is \$38,600 per month.

6 **B. Debtor fails to rebut the presumption that the agreed-upon rental rate**
 7 **constitutes the fair and reasonable value.**

8 The Court should note that Debtor's declarant proffers "upon information and belief" his
 9 statement that the cost to store the Kiosks at the Warehouse allegedly was lower than the monthly
 10 amount Cash Cloud was billed and at times paid per the parties' agreement. Hall Dec. ¶ 11;
 11 Response, at 4:21-22. Statements in declarations made on information and belief are "**entitled to**
 12 **no weight** because the declarant d[oes] not have personal knowledge." *Bank Melli Iran v. Pahlavi*,
 13 58 F.3d 1406, 1412 (9th Cir. 1995) (emphasis added). Accordingly, the Court should disregard
 14 Debtors' declarant's statement.

15 Accordingly, Debtor fails to rebut the presumption that the agreed-upon rental rate
 16 constitutes the fair and reasonable value. *In re Jeans.com*, 491 B.R. 16, 24 (Bankr. D.P.R. 2013)
 17 (citing *In re Dant & Russell, Inc.*, 853 F.2d 700, 707 (9th Cir. 1988)) ("contract rate is typically
 18 presumed to set the reasonable value"); *see also In re Control Elecs., Inc.*, No. BK-S-07-12425-
 19 MKN, 2008 Bankr. LEXIS 5173, at *10 n.9 (Bankr. D. Nev. July 23, 2008) (citing Alan N.
 20 Resnick & Henry J. Sommer, 4 Collier on Bankruptcy, p. 503.06[6] (15th ed. rev. 2008)) ("It is
 21 well-established that the administrative expenses allowed under Section 503(b) include a debtor-
 22 in-possession's rental and related obligations for premises occupied during the Chapter 11 case");
 23 *see Response*, at 3:13-28.

24 In summary, whatever lower amount Debtor thinks it should have paid or wishes it had
 25 paid is irrelevant, because nowhere does Debtor dispute that there was an enforceable agreement
 26 that it pay rent to store the Kiosks with Trangistics or that Debtor was invoiced for storage of the
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1 Kiosks in the amount of \$38,600 per month, periodically paid on those invoices, and never raised
2 an objection to the invoiced amount (aside from its recent objections made via bankruptcy court
3 proceedings in what should be viewed as a not-well-taken attempt to attain an advantage in the
4 litigation).

5 CONCLUSION

6 Because 11 U.S.C. § 503(b)(1)(A) provides that after notice and a hearing, administrative
7 expenses “shall be allowed,” Debtor’s request that the Court “deny Transgistics’[s] request for an
8 administrative expense claim” simply is not supported by law. Response, at 5:12-13. And, because
9 Debtor does not deny that it had an agreement with Transgistics to store the Kiosks and its paying
10 Transgistics to store the Kiosks in the Warehouse were actual and necessary expenses to preserve
11 estate assets, no reason exists to disallow the claim.

12 Moreover, Debtor offers no admissible fact to rebut the presumption that the agreed-upon
13 monthly Warehouse storage rate of \$36,800 was the fair and reasonable value for storage of the
14 Kiosks under the circumstances of the present matter. Accordingly, the Court should allow the
15 claim.

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17 Dated: 7/18/2023
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